

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ARLANDA A. SMITH,

Plaintiff,

V.

CIVIL ACTION NO.  
1:13-CV-0768-RWS

MARNE L. MERCER, in her official and individual capacity with the DeKalb County Police Department, *et al.*

Defendants.

## ORDER

This case is before the Court for consideration of the Report and Recommendation [2] of Magistrate Judge Gerrilyn G. Brill. After reviewing the Report and Recommendation and Plaintiff's Objections [5] thereto, the Court enters the following Order.

In the Report and Recommendation, Judge Brill found that all of Plaintiff's federal claims were untimely as they were filed after the running of the statute of limitations. She recommended that the federal claims be dismissed on that ground and that the Court decline to accept supplemental

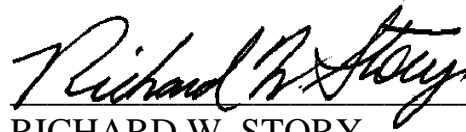
jurisdiction over Plaintiff's state-law claims. In his Objections, Plaintiff asserts that the statute of limitations was tolled pursuant to Heck v. Humphry, 512 U.S. 477 (1994). Plaintiff asserts that his claims were not ripe until he received a judgment in his favor in the related criminal case. Assuming that Heck is applicable, the Court finds that Plaintiff's federal claims are still subject to dismissal. It appears that while Plaintiff may have received a favorable judgment on certain charges, he was convicted of the Count Four harassing phone calls charge and pled guilty to the Count Eight harassing phone calls charge. (See State v. Smith, No. 10C25838, Sup. Ct. Of DeKalb Cnty, Ga., available at [www.ojs.dekalbga.org](http://www.ojs.dekalbga.org).)

Acquittal on one criminal charge "when the charge arose out of the same act for which Plaintiff was convicted on a different charge during the same criminal prosecution" does not constitute "'favorable termination' for the purpose of a subsequent malicious prosecution claim." Kossler v. Crisanti, 564 F.3d 181, 188 (3rd Circuit 2009). Therefore, the Court concludes that Plaintiff did not have a "favorable termination" so as to allow him to proceed with his federal claims.

Based on the foregoing, Plaintiff's federal claims are **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2). Further, the Court declines to exercise

supplemental jurisdiction over Plaintiff's state-law claims. Therefore, This action is hereby **DISMISSED**.

**SO ORDERED**, this 20th day of September, 2013.

A handwritten signature in black ink, reading "Richard W. Story", written over a horizontal line.

RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE